

ARMSTRONG TEASDALE LLP

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

BED BATH & BEYOND, INC., et al.,

Debtors.

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

**NOTICE AND RESERVATION OF RIGHTS
OF NORDSTROM, INC. WITH RESPECT TO CERTAIN LEASES**

Nordstrom, Inc. (“Nordstrom”), by and through its attorney, Armstrong Teasdale LLP, hereby submits its *Notice and Reservation of Rights of Nordstrom, Inc. with respect to Certain Leases* (“Notice and Reservation”) and respectfully states as follows:

On April 23, 2023, Bed Bath & Beyond Inc. (with jointly-administered debtors, collectively, “BBB”) filed its *Debtors’ Motion for Entry of an Order (I)(A) Approving the Auction and Bidding Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Bid Deadlines and an Auction, (D) Approving the Form and Manner of Notice Thereof, (E) Approving the Form APA, and (II)(A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C) Authorizing the Sale of Assets, and (D) Granting Related Relief*. [ECF Doc No. 29]. The Court entered an order [ECF Doc No. 92] and the deadlines therein have been extended several times,

including the most recent extension of the Sale Objection Deadline to June 26, 2023 [ECF Doc No. 692].

Similarly, on June 13, 2023, BBB filed its *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases*. [ECF Doc No. 714] that designated the Leaseback (as defined below) as a lease that may be assumed, but was silent as to the Nordstrom Lease (as defined below). The deadline to object to such notice is also June 26, 2023.

Nordstrom is the operator of a chain of leading high-end department stores as well as its subsidiary, Nordstrom Rack.

In or about 2013, BBB was the owner and operator of a strip mall located in Addison, Texas known as the Gallery on the Parkway (the “Mall”). BBB, as Landlord, and Nordstrom, as Tenant, entered into a written lease agreement (the “Nordstrom Lease”) whereby BBB leased to Nordstrom approximately 39,000 square feet of floor area in the Mall, where Nordstrom continues to operate a Nordstrom Rack. Upon information, in recent years, in addition to Nordstrom Rack, the Mall was occupied by three other retail stores: Bed Bath & Beyond, Buy Buy Baby and another affiliate of Bed Bath & Beyond. The Nordstrom Lease was for a term of ten years with the option of four successive five-year terms, for a total of thirty years if all options were exercised.

We are advised that in or about December 2019, BBB entered into a sale-leaseback arrangement (the “Sale-Leaseback”) with one or more affiliates of Oak Street Real Estate Capital, LLC (“Oak Street”), pursuant to which BBB conveyed its fee interest in and to the Mall to an Oak Street affiliate and entered into a lease (the “Leaseback”) with the Oak Street affiliate as landlord and BBB as tenant, leaving Nordstrom as a tenant to the tenant of the lease in the Sale-Leaseback. The Leaseback occurred more than six years after the Nordstrom Lease, and subject to the preexisting Nordstrom Lease. Because BBB was the fee owner of the Mall at the time the

Nordstrom Lease was entered into and, it is assumed, that the Sale-Leaseback was not even contemplated at that time, the Nordstrom Lease does not contain any *sub-tenant* terms or conditions.

As a result of these circumstances there are two leases that affect Nordstrom: the Nordstrom Lease which provides Nordstrom with rights under 11 U.S.C. § 365(h) and the Leaseback.

To the extent, if at all, that BBB intends to assume, assign, or sell the Leaseback, Nordstrom hereby provides notice that BBB must similarly assume the Nordstrom Lease. To the extent that BBB intends to reject the Leaseback and/or the Nordstrom Lease, Nordstrom hereby reserves all of its rights including, but not limited to its right to recover damages from BBB, its right to pursue possession of the leased premises following rejection, and/or to pursue its state law claims against the Fee Owner.

Respectfully Submitted,



Date: June 26, 2023

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CERTIFICATE OF SERVICE

I, Jeffrey Wurst, an attorney, hereby certify that on June 26, 2023, a true and correct copy of the Notice and Reservation of Rights of Nordstrom, Inc. With Respect to Certain Leases was filed electronically. Notice of the filing will be sent to all parties who are currently on the Court's Electronic Mail Notice List by operation of the Court's Electronic Filing System.



Jeffrey A. Wurst